



## Kobre & Kim's International Judgment Enforcement & Offshore Asset Recovery Team



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## Clashing with Titans: Maximizing Returns on Sovereign Judgment Enforcement

**The current economic downturn has triggered record-breaking amounts of debt owed by governments to overseas investors, but it may seem near impossible to enforce this debt against a sovereign. However, as our International Judgment Enforcement team lays out below, utilizing a nontraditional cross-border strategy has and can successfully enforce judgments with the potential for high returns.**

The economic downturn has triggered a global sovereign debt crisis, with countries owing **record amounts of money** to investors outside their borders. For creditors and investors willing to aggressively pursue their claims against sovereign entities, however, the current crisis has the potential to drive extraordinary returns.

By utilizing proven, cross-border strategies that go beyond traditional litigation tactics that the sovereign will expect, it is possible to reap high returns on outstanding judgments previously considered too tough or too large to enforce.

### 1. Focus on Outcomes, Not Assets

Compared with enforcing debts against companies and individuals, judgment enforcement against sovereign debtors presents unique challenges. Executing against a sovereign's assets can be a long and messy affair that plays out in courts, the press, and the government. Given the protections offered by sovereign immunity, creditors cannot always rely on conventional asset recovery solutions to generate a significant return on investment within a reasonable period of time – especially large judgments.

Investors should focus their resources on strategies that are most likely to cause the sovereign debtor to agree to (and follow through on) an acceptable settlement. In deciding which sovereign assets to pursue, the monetary value of the asset is but one consideration; equally important is whether the asset's seizure is likely to have a chilling effect on an essential stream of revenue or goods.

Furthermore, finding and seizing assets is not the only way to pressure a sovereign entity to settle: In one example, investors could raise concerns about the sovereign's conduct with governments in other countries who are deciding whether to enter into trade agreements with - or provide economic assistance to - the sovereign. In another example, investors could reach out to human rights organizations interested in publicizing the sovereign's treatment of foreign investors and their local associates, and (ultimately) with rating agencies who will be rating the sovereign's debt issues.

### 2. Preserve "Young" Assets with a Receivership

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Commonplace in bankruptcy and restructuring, a receivership is a powerful tool that can assist creditors to recover funds in case of a debtor's default. In the context of a judgment enforcement campaign, however, the appointment of a post-judgment receiver is an oft-overlooked tool that can both preserve the value of certain assets while also applying additional pressure on the sovereign debtor to settle.

For an investor-creditor considering to seize an asset which either cannot immediately be delivered because it hasn't yet matured, or needs to be managed by a third party (such as an ongoing business) to continue to produce value, a receivership can be key to preserving the value of such "young" assets. Receiverships or their equivalent are not available as an enforcement tool in all countries, and in countries that prohibit injunctions against sovereigns the powers of the receiver will have to be carefully defined; however, when they are available, receiverships can be a powerful tool within a monetization strategy against sovereigns.

Given the many efficiencies of a post-judgment receiver – which range from discovery and seizure to generally running a day-to-day business – the mere act of seeking an appointment can also apply considerable pressure on a sovereign debtor to settle.

### **3. Remember: A Settlement Is Not the Finish Line**

One aspect of a monetization campaign that creditors sometimes lose sight of is that a sovereign's agreement to settle is not the end of the fight. A sovereign that incurred a large liability from breaching a contract or expropriating assets may be just as willing to renege on a settlement agreement. If not properly protected, the creditor may find themselves in a worse situation than before the settlement was negotiated, because the sovereign will have bought itself more time to hide and restructure its assets.

Crafting a settlement agreement that protects against these risks is key to securing a substantial return on one's investment. In circumstances where the sovereign insists on paying the settlement amount over a period of time, creditors should consider negotiating forms of security that become accessible if a payment is missed or consent judgments that will allow creditors to immediately start enforcement proceedings in countries where sovereign assets have been identified. Thinking ahead to the next default will help protect a hard-won victory.

With an unconventional judgment enforcement strategy against a sovereign debtor, investors and creditors can increase their chances of achieving both an acceptable settlement and significant monetization of their claim. When formulating their game plan, though, creditors will also need to anticipate the moves their adversary will make: when they fight back with the power of the state.

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### **About Kobre & Kim's International Judgment Enforcement & Offshore Asset Recovery Team**

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct.

The firm's international judgment enforcement & asset recovery team has significant experience acting on behalf of creditors to monetize high-value judgments and arbitration awards. Most of our matters involve awards and judgments with face values of US \$100 million+ to several billion USD. We have extensive experience handling arbitration award and judgment enforcement matters against sovereign governments and related entities, and understand the unique issues and opportunities in such enforcement campaigns.

Many of our cases involve closely coordinated, cross-border proceedings, and we are able to act in jurisdictions across North and South America, EMEA, Asia, and key offshore financial centers.